

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
WESTERN SECTION**

STEVE SACHS, Derivatively On Behalf of
WAVE SYSTEMS CORP.,

Plaintiff,

vs.

STEVEN SPRAGUE, GERARD T.
FEENEY,
JOHN E. BAGALAY, JR., NOLAN
BUSHNELL, GEORGE GILDER AND
JOHN E. MCCONNAUGHY, JR.,

Defendants,

- and -

WAVE SYSTEMS CORP., a Delaware
corporation,

Nominal Defendant.

JEFF SWANSON, On Behalf of Nominal
Defendant, Wave Systems, Corp.

Plaintiff,

v.

STEVEN SPRAGUE, GERARD T.
FEENEY, JOHN E. BAGALAY, JR.,
NOLAN BUSHNELL, GEORGE GILDER,
and JOHN E. MCCONNAUGHY, JR.,

Defendants,

v.

WAVE SYSTEMS CORP.,

Nominal Defendant.

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Civil Action No. 04-30032-MAP

Civil Action No. 04-30038-MAP

CHARLENE HARVEY, Derivatively On
Behalf of WAVE SYSTEMS CORP.,

Plaintiff,

vs.

STEVEN SPRAGUE, GERARD T.
FEENEY,
JOHN E. BAGALAY, JR., NOLAN
BUSHNELL, GEORGE GILDER AND
JOHN E. MCCONNAUGHY, JR.,

Defendants,

- and -

WAVE SYSTEMS CORP., a Delaware
corporation,

Nominal Defendant.

Civil Action No. 04-30044-MAP

**PLAINTIFF JEFF SWANSON'S MOTION FOR LEAVE TO FILE SUR-REPLY TO
REPLY TO OPPOSITION TO PLAINTIFFS SACHS AND HARVEY'S MOTION TO
CONSOLIDATE CASES AND APPOINT CO-LEAD AND LIAISON COUNSEL¹**

Plaintiff Jeff Swanson ("Swanson"), plaintiff in the action styled *Swanson v. Sprague, et al.*, Civil Action No. 04-30038 (the "*Swanson* action"), hereby moves, pursuant to Local Rule 7.1(B)(3) for leave to file his Sur-Reply to Plaintiffs Sachs and Harvey's Reply to the Opposition filed by Swanson to Plaintiffs Sachs and Harvey's Motion to Consolidate Cases and Appoint Co-Lead and Liaison Counsel and Memorandum in Support. Plaintiffs Sachs and Harvey's Reply raises new issues to which Plaintiff Swanson should have the opportunity to respond. Accordingly, Swanson seeks to file the attached Sur-Reply.

¹ Plaintiffs Sachs and Harvey have not yet received leave to file their Proposed Reply; however, Plaintiff Swanson submits this Proposed Sur-Reply for consideration should the Court grant leave to file said Reply.

Counsel for Plaintiffs Sachs and Harvey do not assent to the allowance of this Motion.

DATED: April 30, 2004.

Respectfully submitted,

Plaintiff, Jeff Swanson
By his attorneys,

/s/ Alan L. Kovacs

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Proposed Lead Derivative Counsel

CERTIFICATION PURSUANT TO LOCAL RULE 7.1

The undersigned hereby certifies, pursuant to Local Rule 7.1(a)(2), that counsel for Plaintiff Swanson have conferred with counsel for Plaintiffs Sachs and Harvey and that we were unable to narrow or resolve the issues presented by the foregoing Motion for Leave to File a Sur-Reply memorandum.

/s/ Alan L. Kovacs

Alan L. Kovacs, Esq.

CERTIFICATE OF SERVICE

This certifies that true and correct copies of the above and foregoing were delivered electronically and via facsimile on April 30, 2004 to the following.

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